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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/707,510	11/07/2000	Brian J. Huber	VOPN-0001	9738
7590	04/06/2005		EXAMINER	
Dr. Brian Huber Oncura Partners 3906 Industrial Rowlett, TX 75088			MORGAN, ROBERT W	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/707,510	HUBER, BRIAN J.	
	Examiner Robert W. Morgan	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 December 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-24 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Notice to Applicant

1. In the amendment filed 12/27/04 the following has occurred: Claims 1 and 13 have been amended. Now claims 1-24 are presented for examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Number 6,358,546 to Bebiak and US Patent Number 6,317,719 to Schrier in view of US Patent Number 6,208,974 to Campbell et al.

Bebiak is directed towards a system for customizing pet food while Schrier is directed towards a system and method for providing patient-specific drug information.

As per claims 1 and 13, which are directed towards a method of providing per dose delivery of a veterinary oncology treatment agent, Bebiak teaches the steps of a) inputting via a computer network specific characteristics of a veterinary patient and b) receiving a treatment dose recommendation via the computer network in response to the inputting step (Col. 3, Ln. 22-43).

Bebiak fails to teach:

--the claimed diagnosing a veterinarian patient by a veterinarian;

--the claimed recommending a specific agent dose;

--the claimed accepting the dose recommendation via the computer network; and
--the claimed placing an order for the treatment agent in response to the accepting step.

However these features are well known in the art as evidenced by Schrier (Col. 13, Ln. 5-59). At the time of the invention, one of ordinary skill in the art would have been motivated to modify the system of Bebiak with the above mentioned features in Schrier in order to provide to enable a user to order precise quantities or amounts of treatment agents online as recited in Schrier (Col. 13, Ln. 5-7).

Bebiak and Schrier fail to explicitly teach the claimed diagnosing a veterinarian patient by a veterinarian.

Campbell et al. teaches a software system that manages wellness plans for a veterinary practice that includes exam room computers (208-210, Fig. 2) used by doctors and nurses to conduct medical examinations, to make diagnoses, and select a treatment protocol (see: column 6, lines 10-17).

One of ordinary skill in the art at the time the invention was made would have found it obvious to include a software system for a veterinary practice to make diagnoses with the system as taught by Bebiak and Schrier with the motivation of reducing healthcare cost by encouraging office visits that help identify and resolve health problems early (see: Campbell et al.: column 1, lines 29-31).

As per claims 2, Schrier teaches the step of modifying (changing) the recommendation, wherein in the accepting step the modified (changed) recommendation is accepted (Col. 13, Ln. 12-16).

As per claims 3-4, 15 and 20, Schrier teaches the step of dispensing the treatment agent dose (from a centralized treatment facility—pharmacy) in response to the order placing step (Col. 13, Ln. 17-24).

As per claim 5, in Bebiak the customized results are nutritional formulations comprising multiple ingredients combined at the centralized dispensing facility (Figure 1—(Mixer-114)).

As per claims 6-8 , the formulations in Bebiak are delivered using ancillary equipment such as tubes (infusion sets) (Col. 5, Ln. 54-67).

As per claims 9-10, Bebiak and Schrier do not teach the steps of registering a veterinarian (professional) nor do they teach the steps of verifying the credit account, processing a charge to the credit account in response to the accepting step, or placing an order. However, this feature is well known in the art and the Examiner takes Official Notice of the use of a registration and account verification system within the prior art. It would have been obvious to one of ordinary skill in the art at the time of the invention to have included a registration and account verification system with the motivation of providing the user with a secure means to conduct online transactions while ensuring that only registered users had access to the system.

Further, since the knowledge of electronic registration and accounting verification systems, in general, has clearly existed in the art prior to Applicant's claimed invention and the courts have held that even if a patent does not specifically disclose a particular element, said element being within the knowledge of a skilled artisan, the patent taken in combination with that knowledge, would put the artisan in possession of the claimed invention. *In re Graves*, 36 USPQ 2d 1697 (Fed. Cir. 1995).

As per claims 11 and 21, in Schrier the user enter a diagnosis (characteristics of a patient). At the time of the invention one of ordinary skill in the art would have been motivated to add this aforementioned feature to the system of Bebiak in order to enable the system to determine drugs and alternative drugs for the user (or for the diagnosis) as recited in Schrier (Col. 1, Ln. 58-Col. 2, Ln. 43).

As per claim 12, in Schrier the user can consult a doctor or specialist regarding treatment or dosage information (Col. 25, Ln. 63-Col. 26, Ln. 46). At the time of the invention one of ordinary skill in the art would have been motivated to add this aforementioned feature to the system of Bebiak in order to enable the user of the system in Bebiak to obtain online professional advice regarding a diagnosis or a treatment for a diagnosis.

As per claim 14, in Bebiak the treatment agent dispensing facility is remote (Col. 2, Ln. 26-27).

As per claim 16, in Bebiak the customized pet formulations are packaged (Col. 6, Ln. 1-12). The examiner takes the position that it is within the scope of Bebiak that one of ordinary skill in the art would have understood that these packages can be delivered directly to the veterinarians.

As per claims 17-19, the formulations in Bebiak are delivered using ancillary equipment such as tubes (infusion sets) (Col. 5, Ln. 54-67).

As per claim 22, Schrier teaches the step of modifying (changing) the recommendation, wherein in the accepting step the modified (changed) recommendation is accepted (Col. 13, Ln. 12-16).

As per claims 23-24, Bebiak and Schrier do not teach the steps of registering a veterinarian (professional) nor do they teach the steps of verifying the credit account, processing a charge to the credit account in response to the accepting step, or placing an order. However, this feature is well known in the art and the Examiner takes Official Notice of the use of a registration and account verification system within the prior art. It would have been obvious to one of ordinary skill in the art at the time of the invention to have included a registration and account verification system with the motivation of providing the user with a secure means to conduct online transactions while ensuring that only registered users had access to the system.

Response to Arguments

7. Applicant's arguments filed 12/27/04 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 12/27/04.

(A) In the remarks, Applicants argues in substance that (1) Bebiak fail to teach, suggest or contemplate a veterinary care issue for radiology; (2) Schrier does not relate to applying medical information and specifically drugs via computer and the Internet; and (3) There is no motivation to combine the prior art into veterinary oncology services via the Internet and a computer.

(B) In response to the Applicant's arguments, (1) Bebiak fail to teach, suggest or contemplate a veterinary care issue for radiology. The Examiner respectfully submits that the recitation of "...veterinary oncology treatment agent" has not been given patentable weight because the recitations occur in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a

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structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

(C) In response to the Applicant's arguments, (2) Schrier does not relate to applying medical information and specifically drugs via computer and the Internet. The Examiner respectfully submits that the Bebiak reference, and not Schrier, *per se*, that was relied upon for the specific teaching of users connecting to the main computer (104, Fig. 1) via a computer network such as the Internet (see: column 2, lines 35-38). Schrier was relied on for primarily teaching a computer system using an order window (310, Fig. 11) where the user can enter new prescription orders and use function buttons to view and modify order-related information. Thus, the proper combination of the applied references would be the incorporation of Schrier's system for ordering prescription within the method for customizing pet food for an individual via the Internet as taught by Bebiak.

(D) In response to the Applicant's arguments, (3) There is no motivation to combine the prior art into veterinary oncology services via the Internet and a computer. The Examiner respectfully submits that establishing a *prima facie* case of obviousness is determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992); *In re Hedges*, 783 F.2d 1038, 1039, 228 USPQ 685,686 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785,788 (Fed. Cir. 1984); and *In re Rinehart*, 531 F.2d 1048, 1052, 189 USPQ 143,147 (CCPA 1976). Using this standard, the Examiner respectfully submits that he has at least

satisfied the burden of presenting a *prima facie* case of obviousness, since he has presented evidence of corresponding claim elements in the prior art and has expressly articulated the combinations and the motivations for combinations that fairly suggest Applicant's claimed invention (paper dated 7/6/04).

In addition, the Examiner recognizes obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re DeLisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in *In re Lamberti et al*, 192 USPQ 278 (CCPA) that:

- (i) obviousness does not require absolute predictability;
- (ii) non-preferred embodiments of prior art must also be considered; and
- (iii) the question is not express teaching of references, but what they would suggest.

Additionally, the Examiner recognizes that references cannot be arbitrarily altered or modified and that there must be some reason why one skilled in the art would be motivated to make the proposed modifications. However, although the Examiner agrees that the motivation or suggestion to make modifications must be articulated, it is respectfully contended that there is no requirement that the motivation to make modifications must be expressly articulated within the references themselves. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, *In re Bozek*, 163 USPQ 545 (CCPA 1969).

As such, it is respectfully submitted that an explanation based on logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention that support a holding of obviousness has been adequately provided by the motivations and reasons indicated

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by the Examiner in the prior Office Action (paper dated 6/3/03), *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter., 4/22/93).

Furthermore, the motivation to combine the teachings of the Schrier within the Bebiak reference is given in section 3 of the above Office Action as suggested from a passage in the Schrier column 13, lines 5-7, "enable a user to order precise quantities or amounts of treatment agents online".

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

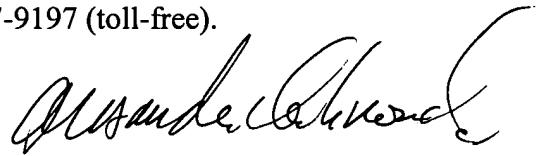
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Morgan whose telephone number is (703) 605-4441. The examiner can normally be reached on 8:30 a.m. - 5:00 p.m. Mon - Fri.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (703) 305-9588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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